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8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

10 BERTI PRODUCE OAKLAND, INC., v. Case No.: 10 4502 JSW

11 Plaintiff,

12 vs.

13 RALPH A. PAIGE, JR. dba SONOMA  
 COUNTY GROWERS EXCHANGE,

14 Defendants.

15  
 16 TEMPORARY RESTRAINING ORDER

17 This matter is before the Court upon Plaintiff's Ex-Parte Motion for Temporary  
 18 Restraining Order pursuant to Rule 65(b) of the Federal Rules of Civil Procedure.  
 19 Pursuant to Rule 65(b), a Temporary Restraining Order may be granted without notice  
 20 to the adverse party only if: (1) it clearly appears from specific facts shown by  
 21 Declaration or verified complaint that immediate and irreparable injury, loss or damage  
 22 will result before the adverse party can be heard in opposition, and (2) the applicant's  
 23 attorney certifies the reasons that notice should not be required.

24 In this case, it clearly appears from the Declaration of Henry Chow, Vice-  
 25 President, that Plaintiff is a produce dealer and trust creditor of Defendant Ralph A.  
 26 Paige, Jr., an individual doing business as Sonoma County Growers Exchange ("Paige")

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 NORTHERN DISTRICT OF CALIFORNIA

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1 under Section 5(c) of the Perishable Agricultural Commodities Act (PACA), 7 U.S.C.  
 2 §499e(c), and has not been paid for produce in the total amount of \$35,611.25 supplied  
 3 to said Defendant as required by the PACA. It is also clear from the same Declaration  
 4 and the Certification of Counsel that said Defendant is in severe financial jeopardy, that  
 5 PACA Trust Assets are being dissipated or threatened with dissipation (Frio Ice, S.A. v.  
 6 Sunfruit, Inc., 918 F.2d 154 (11th Cir. 1990)) and that said Defendant is not or may not be  
 7 in a position to pay Plaintiff's claim (JSG Trading Corp. v. Tray-Wrap, Inc., 917 F.2d 75  
 8 (2d Cir. 1990)), thereby warranting the relief requested by Plaintiff. On the basis of the  
 9 pleadings, Declaration and other submissions Plaintiff has filed in this matter, it  
 10 appears Plaintiff will suffer immediate and irreparable injury due to said Defendant's  
 11 dissipation of Plaintiff's beneficial interest in the statutory trust created pursuant to 7  
 12 U.S.C. §499e(c) and that such dissipation will continue in the absence of injunctive  
 13 relief. Therefore, the Court is of the opinion that a Temporary Restraining Order should  
 14 be issued.

15 If notice is given to Defendant of the pendency of this motion, trust assets will be  
 16 further threatened with dissipation before the motion is heard. As noted in the  
 17 legislative history of PACA, once dissipation has occurred, recovery of trust assets is all  
 18 but impossible. H.R. Rep. No. 543, 98th Cong., 2d Sess. 4 (1983), reprinted in 1984 U.S.  
 19 Code & Admin. News 405, 411. J.R. Brooks & Son, Inc. v. Norman's Country Market,  
 20 Inc., 98 B.R. 47 (Bkrtcy. N.D.Fla. 1989). Entry of this Order without notice assures  
 21 retention of the trust assets under the control of this Court which is specifically vested  
 22 with jurisdiction over the trust. 7 U.S.C. §499e(c)(5). In accord with Rule 65(b)(2), the  
 23 applicant's attorney has certified why notice should not be required.

24 Based on the foregoing, the Court finds that Plaintiff and other PACA trust  
 25 creditors, if any, will suffer immediate irreparable injury in the form of a loss of trust  
 26 assets unless this Order is granted without notice.

27

1       Therefore, it is by the United States District Court for the Northern District of  
2 California, ORDERED:

3       1. Defendant Ralph A. Paige, Jr., individually and doing business as Sonoma  
4 County Growers Exchange, his agents, officers, subsidiaries, assigns, banking and  
5 financial institutions, and all persons in active concert or participation with said  
6 Defendant, are enjoined and restrained from dissipating, paying, transferring, assigning  
7 or selling any and all assets covered by or subject to the trust provisions of the PACA  
8 without agreement of Plaintiff, or until further order of this Court. Under §499e(c)(2) of  
9 PACA, the assets subject to this Order include all of the assets of Ralph A. Paige, Jr.,  
10 unless he can prove to this Court that a particular asset is not derived from perishable  
11 agricultural commodities, inventories of food or other products derived from perishable  
12 agricultural commodities or receivables or proceeds from the sale of such commodities  
13 or products. Provided however, Ralph A. Paige, Jr. may sell perishable agricultural  
14 commodities or products derived from perishable agricultural commodities for fair  
15 compensation, without right of set-off, on the condition that Paige maintains the  
16 proceeds of such sale subject to this Order.

17       2. This Order shall be binding upon the parties to this action and all other  
18 persons or entities who receive actual notice of this Order by personal service or  
19 otherwise.

20       3. The \$35,611.25 in PACA Trust Assets belonging to Plaintiff and in the  
21 possession of the Defendant will serve as Plaintiff's security for this injunction as  
22 required by Rule 65(c) of the Federal Rules of Civil Procedure.

23       4. This Temporary Restraining Order is entered this 6th day of October, 2010,  
24 at 10:30  a.m.  p.m.

25       5. A hearing on Plaintiff's Motion for Preliminary Injunction is set for the 19th  
26 day of October at 11:30  a.m.  p.m.

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1       6. Plaintiff shall forthwith serve Defendant, or their resident agent, or their  
2 counsel, with a copy of this Order, by no later than 5:00 p.m. on October 8, 2010, by personal  
service, including by facsimile transmission or Federal Express.

3                   **DONE and ORDERED**, this 6th day of October, 2010 at San Francisco,  
4 California.

**United States District Judge  
Northern District of California**

Defendant shall file an opposition brief to the motion for preliminary injunction by no later than October 13, 2010 at 3:00 p.m. and Plaintiff shall file a reply by no later than October 15, 2010 at 3:00 p.m.